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EXAMINER	
SALVITTI, MICHAEL A	
ART UNIT	PAPER NUMBER
1767	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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ADVISORY ACTION

Response to Amendment

The proposed amendments are not being entered, as they would require further search and consideration. Specifically, the new limitation requiring a surfactant to be present in the aqueous dispersion requires further search and consideration in view of the preferred embodiments of the applied primary reference (*Patel et al.*, USPN 6,210,853).

Response to Arguments

The following responses are addressed to the document entitled "Remarks" (pages 8-13) received October 14th, 2010.

A) The rejection of claims 39-40 under 35 U.S.C. § 112, first paragraph (pages 9-10 of "Remarks") for failure to comply with the description requirement is maintained for the following reasons:

The instant specification (pages 21-22, ¶ [0077]), as applied to instant claims 39-40 discloses **1)** a process of adjusting pH, and; **2)** a process of freeze drying the resultant particles.

With respect to point **1)**, the instant specification does not support that the adjustment of pH results in aggregation freezing.

With respect to point **2)**, "freezing" does not appear in the specification in a context outside of "freeze drying" which is a related but distinct process. The

specification does not describe the freezing aggregation of the particles by pH adjustment.

The specification is lacking a teaching that the process of instant claims 39-40 result in freezing of the aggregation particles, and the specification does not teach or suggest to a person having ordinary skill in the art whether the adjustment of the pH (or other variables such as change in temperature in ¶ [0077]) results in freezing of aggregation of the particles.

B) Applicant's arguments with respect to the rejection of claims 1,3, 5-7, 10, 11, 13-16, 21, 23, 30, 31, and 34-44 under 35 U.S.C. § 103(a) to *Patel* (USPN 6,210,853) in view of *Wang* (US 2002/0107306) have been fully considered but they are not persuasive.

With respect to applicant's argument (pages 10-13) that modification of *Patel* with *Wang* would render *Patel* unsatisfactory for its intended purpose, due to *Patel* preferring a surfactant-free embodiment, this argument is not persuasive on two grounds:

1) The previously presented claims, received March 12th, 2010, did not require the presence of a surfactant. This limitation appears in the presently amended claims (received October 12th, 2010), and has not been entered since further search and consideration over *Patel* is necessary.

2) With respect to the argument that *Patel* is not combinable with *Wang* on grounds of *Patel* preferring surfactant-free embodiments (see e.g. *Patel* col. 1, lines 30-35 and 15:17-16:47), it is noted that *Patel* appears to prefer surfactant-free dispersions. However *Wang* teaches surfactants as optional components, (*Wang* ¶

[0010]); as optional components, *Wang* effectively allows for a range of 0-20% surfactant (*Wang* ¶ [0019]). *Wang* dissuades from the use of surfactants, since *Wang* recognizes that surfactants have the potential of causing problems in the formation of stable dispersions (¶ [0019]).

The combined teachings of *Patel* and *Wang* suggest the obviousness of foregoing the use of surfactants. Therefore as *Patel* and *Wang* are concerned with the same technical feature regarding absence of surfactant, the position that *Patel* and *Wang* are combinable has been maintained.

C) Applicant's request for rejoinder of claims 17-20 and 24-29 will be given further consideration when all claims directed to the elected invention are in condition for allowance; MPEP § 821.04.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL A. SALVITTI whose telephone number is (571)270-7341. The examiner can normally be reached on Monday-Thursday 8AM-7PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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